IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25/07/2003

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION NO.2436 OF 2003 AND WRIT PETITION NO. 2437 OF 2003
and
WPMP.NOs.3053 & 3054 OF 2003

K.R. Shanmugam
S/o. Ramasamy Gounder .. Petitioner in both WPs

-Vs-

1. The District Collector,
Erode, Erode District.

2. The Special Tahsildar, (LA)
Neighbourhood Schemes,
Surampatty Nall Road,
Surampatty,
Erode District. .. Respondents in both WPs

Petitions filed under Article 226 of the Constitution of India for the issuance of Writ of Mandamus as stated therein.

For Petitioner : Mr.C. Prakasam

For Respondents: Mr.S. Gomathinayagam
Special Govt. Pleader

:J U D G M E N T

Prayer in these two writ petitions is to issue Writ of Mandamus to the respondents to make reference under Section 18 of the Land Acquisition Act. W.P.No.2436 of 2003 relates to Award No.2/94 dated 10.6.1994 relating to Old S.No.762/2-A (Part), Erode Village and W.P.No.2437 of 2003 relates to Award No.1/95 dated 22.5.1995 relating to Old S.Nos.752/3, 752/4-A3 (Part), Erode Village.

2. In both the cases land had been acquired under the very same notification for the implementation of Muthampalayam Neighbourhood Scheme at Erode. In both the cases, it is alleged that after the award enquiry was over, the respondents have not communicated any notice to the petitioner, but

he had made representation to the respondents requesting them to refer the matter to the Civil Court as per Section 18(1) of the Land Acquisition Act (hereinafter referred to as the Act) and they have not passed any orders regarding the same. On the other hand, a reference under Section 30 had been made and the petitioner had made representation to the Civil Court at that stage. It has been further indicated that in respect of adjacent lands belonging to other persons matter has been referred to under Section 18(1) of the Act.

3. Learned counsel appearing for the State has submitted that no reference under Section 18 can be made in the absence of written application to that effect.

4. Section 18 of the Land Acquisition Act is as follows:-

 18. Reference to Court.- (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken :

Provided that every such application shall be made,-

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;

(b) in other cases, within six weeks of the receipt of the notice from the Collector under Section 12, sub-section(2), or within six months from the date of the Collector's award, whichever period shall first expire.

5. A perusal of the aforesaid provision makes it clear that before making a Reference, the Collector is required to be satisfied that (1) the person interested has not accepted the award (2) written application to the Collector requesting him to make a reference is made, and (3) such application shall be made within the period of limitation as contemplated in Section 18(2) proviso.

6. Relying upon the decision reported in 1999(III) CTC 133 (M.P. PALANI AND TWENTY THREE OTHERS v. STATE OF TAMIL NADU, REP. BY THE SECRETARY, INDUSTRIES DEPARTMENT AND TWO OTHERS), the learned counsel for the petitioner has submitted that it is not necessary to file a written application for making reference and if compensation is received under protest, it is to be treated as application for reference. It was observed by the learned single Judge :-

 . . . . Like-wise, if any statement is made during the award enquiry asking for higher compensation, the same may be treated as an application for reference. I also hold that if compensation is received under protest in such case also it is to be treated as an application for reference. In all these cases, undoubtedly, duty is cast on the Collector to refer the matter to the Civil Court under Section 18 of the Land Acquisition Act, 1894 for adjudication. . . .

7. Learned counsel for the petitioner has however submitted that the learned single Judge appears to have stated the Law in very wide terms and the observations made in the said decision run counter to what has been observed in A.I.R. 1979 SC 404 (MOHAMMED HASNUDDIN v. THE STATE OF MAHARASHTRA). In the aforesaid Supreme Court decision, reference has been made by the Collector even though the application for making reference has been filed beyond the stipulated period. The Civil Court while deciding the reference held that reference itself was barred by limitation and therefore, the Collector should not have made the reference. Such view was affirmed by the High Court and the matter came to be decided before the Supreme Court. The Supreme Court while referring to conflicting decisions of various High Courts on the point, affirmed the decision of the Bombay High Court. In course of the decision, it was observed as follows :-

 24. The word require in Section 18 of the Act implies compulsion. It carries with it the idea that the written application makes it incumbent on the Collector to make a reference. The Collector is required to make a reference under Section 18 on the fulfillment of certain conditions. The first condition is that there shall be a written application by a person interested who has not accepted the award. The second condition is as to the nature of the objections which may be taken, and the third condition is as to the time within which the application shall be made. The power of the Collector to make a reference under Section 18 is thus circumscribed by the conditions laid down therein, and one condition is the condition regarding limitation to be found in the proviso.

25. The conditions laid down in Section 18 are matters of substance and their observance is a condition precedent to the Collectors power of reference, as rightly observed by Chandavarkar J, in Re Land Acquisition Act (supra). . . . (Emphasis added)

8. The aforesaid decision of the Supreme Court has not been noticed in the decision of the single Judge in 1999(III) CTC 133 (cited supra). In view of what has been stated by the Supreme Court, it is obvious that the principle has been too widely stated by the learned single Judge, particularly the statement contained in the judgment to the effect . . . I also hold that if compensation is received under protest in such case also it is to be treated as an application for reference.

9. As has been held in many cases, non-acceptance or protest as contemplated under Section 18(1) may be a written protest or an oral protest. Where a written protest is made claiming higher compensation, such a written protest can obviously be taken as a written application for making reference. Where, however, the protest is only oral, even though such a protest may satisfy the requirement of non-acceptance of the award under

Section 18(1), the requirement of making a written application cannot said to have been complied with. Act or the Rules no where prescribe a manner of written application.

10. The matter is now required to be examined by the Land Acquisition Collector, the first respondent, in the light of the decision of the Supreme Court and in the light of the observations made above. The Collector is required to find out whether there has been any written application or written protest in course of award enquiry, wherein the claimant has claimed higher compensation and in such an event after satisfying himself about the requirements relating to limitation, a reference should be made. If, however, the Collector finds that only oral protest has been made and there is no written application, reference cannot be made. This exercise may be done within a period of four months from the date of receipt of a copy of this order. It is also made clear that even if no reference is made at present under Section 18, it would be open to the claimant to take recourse to Section 28-A of the Land Acquisition Act, subject to fulfillment of the conditions indicated in the said provision.

11. Subject to the aforesaid observations and direction, the writ petitions are disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

Index : Yes
Internet : Yes

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To

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Erode, Erode District.

2. The Special Tahsildar, (LA)
Neighbourhood Schemes,
Surampatty Nall Road,
Surampatty,
Erode District.